

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES PORTER HESTER,

Defendant-Appellant.

UNPUBLISHED
February 19, 2004

No. 243636
Kent Circuit Court
LC No. 01-000970-FH

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

Defendant appeals as of right the jury's verdict convicting him of first-degree home invasion, MCL 750.110a(2), and of receiving stolen property having a value of more than \$1,000 but less than \$20,000, MCL 750.535(3)(a). We affirm.

Defendant first contends on appeal that evidence of ten other home invasions was not admissible to demonstrate defendant's identity as the perpetrator, or as evidence that defendant committed the charged home invasion as part of a common plan, scheme or system to commit home invasions under MRE 404(b), and that the trial court committed an abuse of discretion by finding it admissible. We disagree. Although the trial court did not articulate its findings of admissibility on the record, this Court will affirm the trial court's determination if it reached the right result in finding the evidence admissible under MRE 404(b). *People v Watson*, 245 Mich App 572, 582; 629 NW2d 411 (2001).

Evidence of a party's other bad acts is admissible to demonstrate a common scheme, plan or system if: (1) the party offering the evidence is offering it for a proper, non-character purpose; (2) the evidence is relevant under MRE 402 as enforced via MRE 104(b); and (3) any substantially unfair prejudice is outweighed by the probative nature of the evidence. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). If the evidence is being introduced as evidence of the defendant's identity as the perpetrator of the crime, there is an additional requirement that the crimes be so similar as to constitute a signature crime. *People v Golochowicz*, 413 Mich 298, 308-309; 319 NW2d 518 (1982). Here, the trial court issued a proper instruction limiting the jury's consideration of the other acts solely for proper purposes. Additionally, the defense expressed satisfaction with the jury instructions, and has waived any challenges to the jury instructions for purposes of appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

All of the home invasions, save one, occurred during approximately a four-month period of time, and in the same general geographic area. In most of the home invasions, there was only one set of footprints leading from home to home in each instance, indicating that the perpetrator was looking for an unlocked door. Defendant usually entered the homes through an unlocked garage door, although sliding and French doors were also used. Once inside, defendant would check the cars for items to steal, leaving the vehicle doors open, and would then proceed into the homes and take small, easily stolen items such as purses with cash, laptop computers, cellular phones, and cameras. Defendant was arrested incident to a traffic stop, and gave consent to the responding police officers to search his vehicle. Many items stolen during the home invasions were found in defendant's car, and later at the home of defendant's girlfriend, and two pairs of shoes were found in the trunk of defendant's car.

One of the pairs of shoes in the trunk was the same general size and pattern as the one found outside the residence of the charged home invasion. These two pairs of shoes, as well as a third shoe found in the basement of defendant's girlfriend, had general size and pattern similarities to all but two of the uncharged home invasions. After the shoes were seized, there were no more home invasions in the area where similar shoeprints were found. We cannot say that the trial court abused its discretion when it found that there was substantial evidence that the charged home invasion was committed as part of a common scheme or plan, or that the home invasions had similarities substantial enough that they could be considered a signature crime. As a result, defendant's claim on this issue must fail.

Similarly, defendant's claim that the trial court erred when it denied his motion to suppress all of the DNA evidence collected must fail because, contrary to defendant's argument, the DNA evidence is relevant. The DNA evidence in the shoes and a jacket found near a home invasion with a camera taken during the home invasion still in the pocket linked defendant to the other, uncharged crimes. DNA evidence in the pair of shoes was found to have a general pattern similarity and size to the shoeprints found at the scene of the crime charged also was relevant as evidence that defendant could not be excluded as someone who wore the shoes. Any concerns over the accuracy of the DNA testing relate to the weight, not the admissibility of the evidence. *People v Chandler*, 211 Mich App 604, 611; 536 NW2d 799 (1995).

Defendant makes a number of other claims regarding the admissibility of the DNA evidence. However, defendant fails to adequately articulate his arguments or provide cases in support of his contentions. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Affirmed.

/s/ Christopher M. Murray
/s/ William B. Murphy
/s/ Jane E. Markey